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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	44257.830001	7735
25928 7590 07/29/2009 CHRISTOPHER J. KULISH, P.C. 1531 Norwood Avenue Boulder, CO 80304				
EXAMINER				
HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
07/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/701,057

Applicant(s)

VON SPRECKELSEN ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 12-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit 3781

/Robert J Hicks/
Examiner, Art Unit 3781

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed July 15, 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the evidence in the reply brief filed January 14, 2008 was not considered (Remarks, Page 4 Lines 6-12), a notification of the reply brief was filed and mailed to the applicant on March 3, 2008.

In response to applicant's arguments against the Gach (4,815,618), Graboski et al. (6,117,506) [Graboski], and Flanagan (6,082,568) references individually (Remarks, Page 6 Line 10 to Page 8 Line 11), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the Gach, Graboski, and Flanagan references fail to show certain features of applicant's invention (Remarks, Page 9 Lines 19-29), the examiner presents the following.

Gach discloses a thin-walled plastic bottle assembly (Fig. 3) for holding liquid, with a bottle body (10) with an open top (within 36), a neck assembly (20) with an open top (within funnel 34) and an open bottom fused to the bottle body (26), a tearable sealing foil (56) between the neck assembly and the open top to seal the container, and a cap (40) on the top of the neck assembly for a leak-free closure (Col. 2 Line 68 to Col. 3 Line 2). In addition, Webster's Third International Dictionary defines the term "fuse" as "to become integrated, unite, or merge". The lower portion of the neck assembly is fused with the open top portion of the container (Gach, Fig. 3).

Gach does not disclose that the extrusion blow molded body that is non-gas tight. Graboski does disclose a body (Graboski, 10) with a finish for a cap (Graboski, 13) in which the container is extrusion blow molded (Graboski, Col. 2 Lines 59-64), and in which the material for the container is high-density polyethylene (HDPE), which is known in the art as being non-gas tight. The HDPE material can be used in an extrusion blow molding process to make the container, and therefore the extrusion blow molding process can be used to manufacture the Gach container, as the non-gas tight material used for making the container protects the internal contents from degrading (Graboski, Col. 1 Lines 46-47).

The Gach and Graboski combination does not disclose that the neck assembly and cap are injection molded. Flanagan teaches the neck assembly (Flanagan, 15) and the cap (Flanagan, 4) are injection molded (Flanagan, Col. 7 Lines 1-3) for a container (Flanagan, 1). The neck assembly and cap can be injection molded using various materials in order to reduce material costs in the manufacturing process.

The injection molded material can be used in manufacturing the caps for the Gach and Graboski combination containers, thus making the manufacturing process more efficient (Flanagan, Col. 8 Lines 12-13).

Gach, Graboski, and Flanagan, are all from the art of plastic bottles with neck finishes that can attach or fuse together with a cap in order to keep the internal contents of the container from leaking, or from keeping contaminants from degrading the internal contents.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Remarks, Page 11 Line 24 to Page 12 Line 10), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Based on the above mentioned statements, the examiner is maintaining the finality of the office action..

Continuation of 13. Other: The information disclosure statement (IDS) submitted on April 1, 2009 was filed after the mailing date of the final rejection on February 26, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner..